Award No. 12106

Docket No. CL-11757

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2, when it abolished a position of Train Mail Handler, Symbol FF-2007, with headquarters at Federal Street Freight Station, Pittsburgh, Pa., Pittsburgh Region, effective October 26, 1957.

(b) The position should be restored in order to terminate this claim and that Claimants R. E. Martin #1, (Case 726) and C. G. Haag, Jr., (Case 729), and all other employes affected by the abolishment of this position should be restored to their former status (including vacations) and be compensated for any monetary loss sustained by working at a lesser rate of pay; be compensated for any loss sustained under Rule 4-A-1 and Rule 4-C-1; be compensated in accordance with Rule 4-A-2(a) and (b) for work performed on holidays or for holiday pay lost or on the rest days of their former position; be compensated in accordance with Rule 4-A-3 if their working days were reduced below the guarantee provided in this rule; be compensated in accordance with Rule 4-A-6 for all work performed in between the tour of duty of their former position; be reimbursed for all expenses sustained in accordance with Rule 4-G-1(b); that the total monetary loss sustained, including expenses, under this claim be ascertained jointly by the parties at time of settlement (Award 7287). (Docket 456)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the

Therefore, it is unnecessary for your Honorable Board to decide this secondary issue.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties thereto. To grant the claim of the Employes in this case would require the Board to disregard the Agreements between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established conclusively that no violation of the Clerks' Rules Agreement resulted from its actions in abolishing the Train Mail Handler position here involved and that none of its actions in the matter were otherwise improper. It follows, therefore, that the Employes' claim in this case is completely without merit and your Honorable Board is respectfully requested to deny or dismiss it.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

All data contained herein have been presented to the employes involved or to their duly authorized representative.

(Exhibits not reproduced).

OPINION OF BOARD: The facts are not in dispute. On October 26, 1957 the Carrier abolished the position of Train Mail Handler thus eliminating the jobs of Claimants R. E. Martin and C. G. Haag, Jr.

The Petitioner contends that Rule 3-C-2 was violated when the position of Train Mail Handler was abolished and takes the position that the only issue before the Board is whether or not this rule was violated.

The Carrier takes the position that the abolishment of the position of Train Mail Handler was not a violation of the rule in question and that the elimination of this job was not a violation of any other provision of the Agreement between the parties.

At the outset we find that the Agreement nowhere prohibits the abolishment of positions that are no longer needed. In fact Rule 3-C-2 contains a marginal heading showing that this section of the Agreement deals with

"Assignment of Work". The frame of reference of this section is clearly set out in 3-C-2 (a) as follows:

> "When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:
>
> (1) To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.
>
> (2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other supervisory employe, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other supervisory employe.
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> (3) Work incident to and directly attached to the primary duties of another class or craft such as preparation of time cards, rendering statements, or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, may be performed by employes of such other craft or class.
>
> (4) Performance of work by employes other than those covered by this Agreement in accordance with paragraphs (2) and (3) of this rule (3-C-2) will not constitute a violation of any provision of this Agreement."

Thus it can be readily seen that nowhere in the above quoted rule is there a prohibition prohibiting the Carrier from abolishing positions which, in its judgment, are no longer needed. The rule concerns itself with the mechanics of "Assignment of Work" and not with the preventing of the abolition of positions. The rule does contain certain conditions determining the distribution of work previously assigned to a clerical position which has been abolished. Paragraph (1) of the Rule provides that the work of an abolished clerical position will be assigned to another employe covered by the Agreement when such other position remains in existence at the location involved. We find that in the instant case there was no other clerical position remaining at the location. Therefore no violation of this paragraph of the Rule took place.

Paragraph (2) provides that if no other clerical position remains in existence at the location involved, the work may be assigned to a supervisory employe if such work is incidental to his duties and with the further proviso that less than 4 hours work per day of the abolished position remains to be performed. In the case at bar there was no distribution of the work of the abolished position to a supervisory employe and therefore no violation of this paragraph of the rule occurred.

Paragraph (3) provides that work incident to and directly related to the primary duties of another class or craft may be performed by employes of such other craft or class. It is not disputed that trainmen mail handlers as well as clerical mail handleds sorted mail pouches as to location and dropped off and picked up mail at various stations between Pittsburgh and Crestline. On the train in question, No. 53, it was the practice for the clerical mail handler

to prepare Forms AD-6603 and CD-1201. AD-6603 was a count of mail "on" and "off." CD-1201 was a report showing the amount of mail remaining in the storage car on arrival at Crestline. Such reports were not confined to mail that was handled by the clerical mail handlers but also included mail handled by the train mail handler. The preparation of these reports was merely incidental to the primary purpose of the positions which was to handle mail and which work is not exclusively the work of employes covered by the instant Agreement. Since the preparation of the reports involved is work that is incidental to the duties of employes of another craft and Rule 3-C-2 (a) (3) specifically provides for such work being performed by others there was no violation of that paragraph of the rule.

Petitioner's argument also encompasses a contention that the Scope Rule was violated. The Scope Rule in the instant Agreement merely lists classes of employes but does not describe the work done by the classes of employes. As such the said Rule is general in character. It is well settled by the Third Division in numerous cases that where the Scope Rule is general the work covered by the Agreement is the traditional and customary work performed by the employes assigned to the positions set forth in the Agreement. In such case it is necessary to rely upon evidence outside of the Agreement itself in order to determine whether the work in question has been reserved traditionally and customarily to the positions covered by the Agreement. The burden of producing such evidence is upon the claimant, who alleges that the Agreement has been violated. See Award 7338, 7322, 6824, 8342, 8331 and other awards too numerous to mention. The evidence in the instant case is persuasive that other employes, besides the members of the Petitioner's Organization, such as train mail handlers, have for many years performed duties also performed by clerks, The handling of mail, on the facts in this record has not been the exclusive province of the members of the Clerk's Organization.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

The parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That we find, after considering the evidence in this case, that the Carrier did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January, 1964.